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[Ed. Note.—For other cases, see Carriers, Cent. Dig. §§ 427-433; Dec. Dig. § 100.* 2 Va.-W. Va. Enc. Dig. 688; 15 Va.-W. Va. Enc. Dig. 157.]

4. Carriers (§ 100*)—Freight—Demurrage.—The fact that terminal yards on which coal cars stood were six miles in length, so that the cars were not actually on the pier at their final destination, would not make them not subject to demurrage while standing in such yards awaiting the convenience of the consignee or the arrival of the vessel into which they were to be loaded; the leaving of the cars in the yards not having prejudiced the consignee.

[Ed. Note.—For other cases, see Carriers, Cent. Dig. §§ 427-433; Dec. Dig. § 100.* 2 Va.-W. Va. Enc. Dig. 688; 15 Va.-W. Va. Enc. Dig. 157.]

Error to Law and Chancery Court of City of Norfolk.

Proceedings by the Norfolk & Western Railway Company against the Citizens' Bank of Norfolk. Judgment for plaintiff, and defendant brings error. Affirmed.

J. G. Martin, of Norfolk, for plaintiff in error.

Hughes, Little & Seawell, of Norfolk, for defendant in error.

SPRIGGS et al. *v.* JAMERSON.

June 12, 1913.

[78 S. E. 571.]

1. Appeal and Error (§ 843*)—Review—Matters Not Necessary to Decision.—The court will not construe Code 1904, § 3392, providing that not more than two new trials shall be granted to the same party in the same cause, where the motion for a third new trial was properly overruled by the trial court.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 3331-3341; Dec. Dig. § 843.* 1 Va.-W. Va. Enc. Dig. 576; 14 Va.-W. Va. Enc. Dig. 90; 15 Va.-W. Va. Enc. Dig. 65.]

2. Ejectment (§ 94*)—Evidence—Identity of Land.—In an action of ejectment, evidence held not sufficient to identify the land occupied by the defendant as the land claimed by the plaintiffs.

[Ed. Note.—For other cases, see Ejectment, Cent. Dig. § 279; Dec. Dig. § 94.* 4 Va.-W. Va. Enc. Dig. 910.]

3. Ejectment (§ 9*)—Defense—Failure to Claim Title—Effect.—The failure of the defendant to claim title or right to the premises sued for in ejectment cannot be considered in determining the identity of the land, where the plaintiffs' evidence fails to make a prima facie case on that point.

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

[Ed. Note.—For other cases, see Ejectment, Cent. Dig. §§ 16-29; Dec. Dig. § 9.* 4 Va.-W. Va. Enc. Dig. 884.]

4. Appeal and Error (§ 837*)—Subsequent Appeals—Record on Former Appeal.—In passing upon the sufficiency of evidence to support a verdict of the jury, the court cannot look to the record of the evidence introduced at a former trial of the same case.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 3262-3272, 3274-3277, 3289; Dec. Dig. § 837.* 1 Va.-W. Va. Enc. Dig. 505.]

5. Ejectment (§ 9*)—Title of Plaintiff.—As a general rule a plaintiff, to recover in an action of ejectment, must derive title from the commonwealth by a proved or presumed grant or establish title by adverse possession.

[Ed. Note.—For other cases, see Ejectment, Cent. Dig. §§ 16-29; Dec. Dig. § 9.* 4 Va.-W. Va. Enc. Dig. 875; 14 Va.-W. Va. Enc. Dig. 366; 15 Va.-W. Va. Enc. Dig. 319.]

6. Ejectment (§ 9*)—Prior Possession of Plaintiff.—Where the defendant in ejectment entered upon the peaceable possession of the plaintiff without title or authority, plaintiff may recover without proof of title.

[Ed. Note.—For other cases, see Ejectment, Cent. Dig. §§ 16-29; Dec. Dig. § 9.* 4 Va.-W. Va. Enc. Dig. 877; 14 Va.-W. Va. Enc. Dig. 366; 15 Va.-W. Va. Enc. Dig. 319.]

Error to Circuit Court, Buckingham County.

Action by one Spriggs and others against J. D. Jamerson. Judgment for the defendant, and plaintiffs bring error. Affirmed.

Harrison & Long, of Lynchburg, for plaintiffs in error.

A. B. Dickinson, of Richmond, for defendant in error.

HUFF et al. *v.* WELCH.

June 12, 1913.

[78 S. E. 573.]

1. Wills (§ 330*)—Testamentary Incapacity—Evidence—Instructions.—Where, in a suit to contest a will on the ground of mental incapacity of testator about 78 years old at the time of the execution of the will, the testimony of the attesting witnesses and neighbors showed testamentary capacity, instructions correctly defining mental capacity to execute a will by one enfeebled by age and placing the burden of proof on proponent sufficiently submitted the issues, so that the refusal of requested instruction was not erroneous.

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.